

The injury to claimant on January 19, 1995, occurred as claimant was emptying fifty-five (55) gallon trash barrels. While holding a trash barrel, claimant developed a sudden pain in his back. This incident was witnessed by claimant's supervisor, Mr. Jeff Elliott, who ran over and helped claimant with the barrel. Claimant was instructed by Mr. Elliott to complete an accident report. Claimant's Exhibit 2 to the preliminary hearing was identified as an accident report form, which claimant alleges was filled out and signed by Mr. Jeff Elliott. The testimony of the claimant regarding the preparation of this form is uncontroverted. Uncontradicted evidence, which is not improbable or unreasonable, may

not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Appeals Board finds that while claimant admittedly did not report the November 1994 injury to his back to the respondent in a timely fashion, the injury of January 19, 1995, was reported to claimant's supervisor. K.S.A. 44-520 requires notice of an accident stating the time, place and particulars thereof within ten (10) days after the date of accident "except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

In this instance, the claimant stated his supervisor, Mr. Jeff Elliott, had actual knowledge of the accident being present at the time of the incident. The Appeals Board finds that claimant provided notice to the respondent of the January 19, 1995 accident as required by K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated June 20, 1995, shall be and is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas
William L. Townsley III, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director